

The Richard S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEBORAH FRAME-WILSON, CHRISTIAN
SABOL, SAMANTHIA RUSSELL, ARTHUR
SCHAREIN, LIONEL KEROS, NATHAN
CHANEY, CHRIS GULLEY, SHERYL
HOLLY-TAYLOR, ANTHONY COURTNEY,
DAVE WESTROPE, STACY DUTILL, SARAH
ARRINGTON, MARY ELLIOT, HEATHER
GEESEY, STEVE MORTILLARO, CHAUNDA
LEWIS, ADRIAN HENNEN, GLENDA R.
HILL, GAIL MURPHY, PHYLLIS HUSTER,
and GERRY KOCHENDORFER, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware corporation,

Defendant.

No. 2:20-cv-00424-RSM

**DEFENDANT AMAZON.COM,
INC.’S ANSWER TO
PLAINTIFFS’ SECOND
AMENDED CLASS ACTION
COMPLAINT (SECOND
CORRECTED)**

PRELIMINARY STATEMENT

Having a reputation for competitive prices—and in fact offering competitive prices—are fundamental business objectives for Amazon, which prides itself on being Earth’s most customer-centric company. Within the intensely competitive retail environment, customers shop around until they find the best deal. Even a single bad experience in Amazon’s store—such as paying an uncompetitive price for a product—can damage customer trust, which is essential to success in retail and can easily be lost. The gravamen of Plaintiffs’ Second Amended Class Action Complaint (Second Corrected) (“Complaint”) is that Amazon’s policies encouraging low prices in its store somehow constitute an antitrust violation. This proposition—that Amazon

DEFENDANT AMAZON’S ANSWER TO PLAINTIFFS’ SECOND AMENDED
CLASS ACTION COMPLAINT (SECOND CORRECTED)
(2:20-cv-00424-RSM) - 1

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1 should not be allowed to encourage low prices from third-party sellers in its store, featuring
 2 competitively priced products—defies common sense and the fundamental principles of
 3 competition law.

4 **AMAZON’S ANSWER TO PLAINTIFFS’ COMPLAINT**

5 Amazon responds to the allegations in the Complaint as set forth below. Any allegation
 6 not expressly and explicitly admitted is denied. To the extent substantive factual allegations
 7 embodied in the boldface headings from the Complaint reproduced below require a response,
 8 Amazon denies them.

9 1. Amazon admits that the Court granted in part and denied in part Amazon’s
 10 motion to dismiss Plaintiffs’ First Amended Complaint with leave to amend. *Frame-Wilson v.*
 11 *Amazon.com, Inc.*, 591 F. Supp. 3d 975 (W.D. Wash. 2022). Amazon further admits that
 12 Plaintiffs filed a Complaint, and the Court granted in part Amazon’s Motion to Dismiss
 13 Plaintiffs’ Second Amended Complaint, dismissing Plaintiffs’ *per se* claims under Section 1 of
 14 the Sherman Act and the Cartwright Act. Except to the extent expressly admitted, Amazon
 15 denies the allegations in Paragraph 1.

16 2. Amazon denies the allegations in Paragraph 2. The Court dismissed Plaintiffs’
 17 claim that they have alleged agreements between competitors, holding that Plaintiffs are
 18 challenging vertical agreements between Amazon and each of its third-party sellers, *Frame-*
 19 *Wilson*, 591 F. Supp. 3d at 986–87; *Frame-Wilson v. Amazon.com, Inc.*, 2023 WL 2632513 at *4
 20 (W.D. Wash. March 24, 2023), and as a result, Plaintiffs have failed to “present facts ‘supporting
 21 a horizontal agreement, a “meeting of the minds,” or conspiracy between’ third-party sellers who
 22 entered an MFN that would lead to *per se* liability,” 2023 WL 2632513 at *5. Accordingly, the
 23 Court dismissed without leave to amend Plaintiffs’ causes of action for *per se* liability. *Id.*

24 3. Amazon admits that the Court denied Amazon’s Motion to Dismiss for antitrust
 25 standing based on the co-conspirator exception that requires that a plaintiff be a direct purchaser
 26 of defendant. *Frame-Wilson*, 591 F. Supp. 3d at 984. Only a small portion of Plaintiffs’ alleged
 27 purchases could fall within the co-conspirator exception because most did not involve purchases

1 from alleged co-conspirators. Amazon admits that the Court did not consider whether, for
2 purchases from non-conspirator sellers, Plaintiffs have antitrust standing based on an umbrella
3 theory. *Id.* Amazon further admits that in the Complaint, Plaintiffs added a claim for conspiracy
4 to monopolize. Except to the extent expressly admitted, Amazon denies the allegations in
5 Paragraph 3.

6 4. Amazon admits that the Court denied Amazon's Motion to Dismiss Plaintiffs'
7 First Amended Complaint for failure to adequately plead market definition, concluding that:
8 "The validity of the relevant market is a factual question reserved for a jury, and the Court makes
9 no such determination here." *Frame-Wilson*, 591 F. Supp. 3d at 990. In addition, Amazon
10 admits that Paragraph 4 references a House Judiciary Committee report, which speaks for itself.
11 Amazon further admits that in the Complaint, Plaintiffs added additional submarkets and a claim
12 for conspiracy to monopolize. Except to the extent expressly admitted, Amazon denies the
13 allegations in Paragraph 4.

14 5. Amazon denies the allegations in Paragraph 5. The Court held that Plaintiffs'
15 California state law claim asserted in the Complaint failed for the same reasons that its *per se*
16 claim under the Sherman Act failed to state a claim and dismissed the California state law claim.
17 *Frame-Wilson*, 2023 WL 2632513, at *7.

18 6. Amazon admits that Paragraph 6 purports to describe the Complaint, which
19 speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations in
20 Paragraph 6.

21 7. To the extent the allegations in Paragraph 7 contain legal conclusions and
22 characterizations, no responsive pleading is required. Insofar as a responsive pleading is
23 required, Amazon denies the allegations in Paragraph 7.

24 8. Amazon admits that in 2000, Amazon opened its U.S. store—the U.S. Amazon
25 Marketplace—to offer its marketplace services to third-party sellers. Before that time, Amazon
26 only sold goods to consumers as a retailer. Like others administering online marketplace
27 services, Amazon, retains a "referral fee" for each item sold in its U.S. store, which varies based

1 on the item sold. Amazon further admits that it charges third-party sellers fees for optional
2 services that third-party sellers would otherwise need to perform themselves and/or pay for (for
3 example, storage, packaging, and shipping), including when they sell on their own websites.
4 These fees are therefore not additional fees but are rather fees for services that a seller has the
5 option of having Amazon perform. Amazon further admits that Paragraph 8 selectively quotes
6 from an article, a 2018 Declaration from Ella Irwin, and a 2017 Declaration from Nicholas
7 Denissen, which speak for themselves. Except to the extent expressly admitted, Amazon denies
8 the allegations in Paragraph 8, and specifically denies the substance of the quoted language.

9 9. Amazon admits that Paragraph 9 references articles, which speak for themselves.
10 Amazon has countless competitors, including Walmart—the largest retailer in the United States
11 (and the world). Third-party sellers thrive in Amazon’s U.S. store because Amazon has helped
12 third-party sellers compete by innovating and investing in and offering them selling tools,
13 including tools to help sellers manage inventory, process payments, track shipments, and create
14 reports, with sales by third-party sellers in Amazon’s U.S. store exceeding those by Amazon as a
15 first-party seller. Amazon admits that as a first-party seller, it sells a wide range of physical
16 goods to customers shopping in its U.S. store, and that some of these goods overlap with goods
17 offered by third-party sellers in Amazon’s store. Except to the extent expressly admitted,
18 Amazon denies the allegations in Paragraph 9.

19 10. Amazon admits that it offers third-party sellers the opportunity to purchase ads
20 and that many sellers avail themselves of the opportunity to purchase ads, although ads are not
21 required to sell in Amazon’s U.S. store. Amazon likewise incurs advertising costs. Except to the
22 extent expressly admitted, Amazon denies the allegations in Paragraph 10.

23 11. Amazon admits that there is vigorous competition for retail and fulfillment
24 services and that for the type and quality of services that Amazon provides, its services are
25 priced competitively and reflect the value that Amazon delivers to sellers and customers. Third-
26 party sellers thrive in Amazon’s U.S. store because Amazon has helped third-party sellers
27 compete by innovating and investing in and offering them selling tools, including tools to help

1 sellers manage inventory, process payments, track shipments, and create reports. Amazon's
2 innovation and investment in Fulfillment by Amazon and the Prime membership program
3 meaningfully improved the customer experience of buying from independent sellers,
4 contributing to their success in Amazon's U.S. store. Except to the extent expressly admitted,
5 Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
6 allegations in Paragraph 11 and therefore denies them.

7 12. Amazon denies the allegations in Paragraph 12.

8 13. Amazon admits that it enters into a Business Solutions Agreement ("BSA") with
9 third-party sellers who sell physical goods in Amazon's U.S. store that describes the terms and
10 conditions under which third-party sellers may sell their physical goods in Amazon's U.S. store.
11 Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 13.

12 14. Amazon admits that the BSA formerly contained a parity provision, which was
13 removed in March 2019 for sellers in Amazon's U.S. store; prior to its removal, the provision
14 was rarely enforced. Amazon further admits that the parity provision required that "the Purchase
15 Price and every other term of offer or sale" of a seller's product be "at least as favorable to
16 Amazon Site users as the most favorable terms upon which a product is offered or sold" via a
17 seller's other sales channels. These provisions are commonplace in retail to avoid third-party
18 sellers from discriminating against a store's customers and to help stores offer customers a
19 trusted place to shop. Except to the extent expressly admitted, Amazon denies the allegations in
20 Paragraph 14.

21 15. Amazon admits that the parity provision was removed from the BSA for the U.S.
22 store in March 2019, including because it was rarely enforced. Except to the extent expressly
23 admitted, Amazon denies the allegations in Paragraph 15.

24 16. Amazon admits that the BSA requires third-party sellers to follow Amazon
25 policies, including the Marketplace Fair Pricing Policy ("MFPP"). The MFPP is not an MFN
26 provision; it prohibits third-party sellers from offering their products in Amazon's U.S. store at
27 prices that are "significantly higher" than competitive prices across thousands of retail stores, as

1 well as recent prices on Amazon; in other words, the MFPP prohibits price gouging. The MFPP
2 was adopted in the BSA for the U.S. store in November 2017, over a year before the parity
3 provision was removed from the BSA. Amazon further admits that Paragraph 16 selectively
4 quotes and refers to the MFPP. Except to the extent expressly admitted, Amazon denies the
5 allegations in Paragraph 16.

6 17. Amazon admits that Paragraph 17 selectively quotes from a report by the House
7 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
8 Amazon denies the allegations in Paragraph 17, and specifically denies the substance of the
9 quoted language.

10 18. To the extent the allegations in Paragraph 18 are legal conclusions and
11 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
12 required, Amazon admits that Paragraph 18 selectively quotes from an April 2019 letter to
13 investors from Jeff Bezos, which speaks for itself. The letter also compared “the share of
14 physical gross merchandise sales sold on Amazon by independent third-party sellers—mostly
15 small- and medium-sized businesses—as opposed to Amazon retail’s own first party sales.
16 Third-party sales have grown from 3% of the total to 58%.” The letter also explained how
17 Amazon helped independent sellers compete against Amazon’s first-party business by investing
18 in and offering them selling tools, including tools that help sellers manage inventory, process
19 payments, track shipments, create reports, and sell across borders. As the letter further
20 explained: “But of great importance are Fulfillment by Amazon and the Prime membership
21 program. In combination, these two programs meaningfully improved the customer experience
22 of buying from independent sellers. With the success of these two programs now so well
23 established, it’s difficult for most people to fully appreciate today just how radical those two
24 offerings were at the time we launched them. We invested in both of these programs at
25 significant financial risk and after much internal debate. We had to continue investing.” Except
26 to the extent expressly admitted, Amazon denies the allegations in Paragraph 18.

27 19. Amazon denies the allegations in Paragraph 19.

1 20. Amazon admits that some third-party sellers who sell goods in Amazon's U.S.
2 store also sell goods through other retail channels, including through Walmart, which is the
3 largest retailer in the United States (and the world). Amazon lacks knowledge or information
4 sufficient to form a belief as to the truth of the allegations in Paragraph 20 regarding the number
5 of third-party sellers that sell on other retail websites and therefore denies them. Except to the
6 extent expressly admitted, Amazon denies the allegations in Paragraph 20.

7 21. Amazon admits that popular, household brands use Amazon's U.S. store to sell to
8 customers. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph
9 21.

10 22. Amazon admits that Paragraph 22 selectively quotes from a 2018 Declaration
11 from Ella Irwin, which speaks for itself. Except to the extent expressly admitted, Amazon denies
12 the allegations in Paragraph 22, and specifically denies the substance of the quoted language.

13 23. Amazon admits that multiple offers for the same product may be placed on a
14 single detail page, allowing customers to easily compare all offers for a particular product.
15 Amazon further admits that the "Featured Offer" is intended to highlight for customers an offer
16 that Amazon believes, based on an analysis of data, that they would most likely choose. Amazon
17 further admits that, in addition to the Featured Offer, other competing offers are available on the
18 single detail page and the all offers display page. Amazon also admits that Paragraph 23
19 purports to include images of Amazon's U.S. store but lacks sufficient knowledge or information
20 to form a belief of the truth or accuracy of the image and therefore denies the truth and accuracy
21 of the image. Except to the extent expressly admitted, Amazon denies the allegations in
22 Paragraph 23.

23 24. Amazon admits that the Featured Offer is available on Amazon's mobile U.S.
24 store on the single detail page for a given item; the all offers display, which shows all other
25 offers, is also present on the single detail page. Amazon also admits that Paragraph 24 purports
26 to include an image of Amazon's mobile U.S. store but lacks sufficient knowledge or
27 information to form a belief of the truth or accuracy of the image and therefore denies the truth

1 and accuracy of the image. Except to the extent expressly admitted, Amazon denies the
2 allegations in Paragraph 24.

3 25. Amazon admits that most of the sales in Amazon's U.S. store are from Featured
4 Offers. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 25.

5 26. Amazon lacks knowledge or information sufficient to form a belief as to the truth
6 of the allegations in Paragraph 26 concerning how "outside retailers" compete with Amazon and
7 therefore denies them. Amazon denies the remaining allegations in Paragraph 26.

8 27. Amazon denies the allegations in Paragraph 27.

9 28. Amazon admits that Paragraph 28 selectively quotes from a 2018 Declaration
10 from Ella Irwin, which speaks for itself. To the extent the remaining allegations in Paragraph 28
11 are legal conclusions and characterizations, no responsive pleading is required. Insofar as any
12 responsive pleading is required, Amazon denies the remaining allegations in Paragraph 28, and
13 specifically denies the substance of the quoted language.

14 29. The Court has dismissed Plaintiffs' *per se* claim under Section 1 of the Sherman
15 Act twice for failure to state a claim; accordingly, no responsive pleading is required. *Frame-*
16 *Wilson*, 591 F. Supp. 3d at 987; *Frame-Wilson*, 2023 WL 2632513, at *5. To the extent a
17 response is required, the allegations in Paragraph 29 are legal conclusions and characterizations,
18 to which no responsive pleading is required. Insofar as any responsive pleading is required,
19 Amazon denies the allegations in Paragraph 29.

20 30. The Court dismissed Plaintiffs' *per se* claim under California's antitrust law;
21 accordingly, no responsive pleading is required. *Frame-Wilson*, 2023 WL 2632513, at *7. To
22 the extent a response is required, the allegations in Paragraph 30 are legal conclusions and
23 characterizations, to which no responsive pleading is required. Insofar as any responsive
24 pleading is required, Amazon denies the allegations in Paragraph 30.

25 31. To the extent the allegations in Paragraph 31 are legal conclusions and
26 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
27 required, Amazon admits that Paragraph 31 selectively summarizes an article regarding retailer

1 Molson Hart, which speaks for itself. Except to the extent expressly admitted, Amazon denies
2 the allegations in Paragraph 31.

3 32. Amazon admits that there is vigorous competition for online retail and fulfillment
4 services and that for the type and quality of services that Amazon provides, its services are
5 priced competitively and reflect the value that Amazon delivers to sellers and customers.
6 Amazon has countless competitors, including eBay. Third-party sellers thrive in Amazon's U.S.
7 store because Amazon has helped third-party sellers compete by innovating and investing in and
8 offering them selling tools, including tools to help sellers manage inventory, process payments,
9 track shipments, and create reports. Amazon's innovation and investment in Fulfillment by
10 Amazon and the Prime membership program meaningfully improved the customer experience of
11 buying from independent sellers, contributing to their success in Amazon's U.S. store. Amazon
12 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in
13 Paragraph 32 regarding sellers' experiences selling in eBay's store and therefore denies them.
14 Except to the extent expressly admitted, Amazon denies the remaining allegations in Paragraph
15 32.

16 33. Amazon admits that Paragraph 33 selectively quotes an article, which speaks for
17 itself. Amazon admits that it competes with Walmart, the largest retailer in the United States
18 (and the world). Amazon further admits that some third-party sellers that sell in Amazon's U.S.
19 store also sell in Walmart's marketplace. Amazon further admits that it offers third-party sellers
20 optional services for additional fees, including FBA. Amazon lacks knowledge or information
21 sufficient to form a belief as to the truth of the allegations in Paragraph 33 regarding sellers'
22 experiences selling in Walmart's store and therefore denies them. Except to the extent expressly
23 admitted, Amazon denies allegations in Paragraph 33, and specifically denies the substance of
24 the quoted language.

25 34. Amazon admits that it offers sellers the opportunity to purchase ads and that
26 many sellers avail themselves of the opportunity to purchase ads, although ads are not required to
27 sell in Amazon's U.S. store. Amazon further admits that Paragraph 34 selectively quotes from

1 articles, which speak for themselves. Amazon lacks knowledge or information sufficient to form
2 a belief as to the truth of the allegations in Paragraph 34 regarding sellers' experiences selling in
3 Walmart's store and therefore denies them. Except to the extent expressly admitted, Amazon
4 denies the allegations in Paragraph 34, and specifically denies the substance of the quoted
5 language.

6 35. Amazon admits that Paragraph 35 selectively quotes from testimony before the
7 House Judiciary Committee and an article regarding retailer Molson Hart, which speak for
8 themselves. Amazon represents only a small percentage of the intensely competitive U.S. retail
9 industry, where customers switch between online and offline shopping, with most sales still
10 made through physical stores that sell identical products to those offered online. There is also
11 intense price competition, with consumers using their smartphones in stores to compare prices at
12 other physical and online stores. Except to the extent expressly admitted, Amazon denies the
13 allegations in Paragraph 35, and specifically denies the substance of the quoted language.

14 36. To the extent the allegations in Paragraph 36 are legal conclusions and
15 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
16 required, Amazon denies the allegations in Paragraph 36.

17 37. To the extent the allegations in Paragraph 37 are legal conclusions and
18 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
19 required, Amazon denies the allegations in Paragraph 37.

20 38. Amazon admits that Paragraph 38 selectively quotes from a 2018 Declaration
21 from Ella Irwin and a 2020 Press Release, which speak for themselves. Except to the extent
22 expressly admitted, Amazon denies the allegations in Paragraph 38, and specifically denies the
23 substance of the quoted language.

24 39. To the extent the allegations in Paragraph 39 are legal conclusions and
25 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
26 required, Amazon denies the allegations in Paragraph 39. Amazon's percentage of the intensely
27 competitive U.S. retail industry is small, where customers switch between online and offline

1 shopping, with most sales still made through physical stores that sell identical products to those
2 offered online. There is also intense price competition, with consumers using their smartphones
3 in stores to compare prices at other physical and online stores.

4 40. To the extent the allegations in Paragraph 40 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
6 required, Amazon denies the allegations in Paragraph 40. As a retailer, Amazon competes with
7 all retailers both online and offline.

8 41. To the extent the allegations in Paragraph 41 are legal conclusions and
9 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
10 required, Amazon denies the allegations in Paragraph 41.

11 42. Amazon admits that third-party sellers account for the majority of sales in
12 Amazon's U.S. store. Amazon admits that Paragraph 42 contains a chart entitled Amazon
13 Marketplace Sales in the United States but lacks knowledge or information sufficient to form a
14 belief as to the truth or accuracy of the chart and therefore denies the truth and accuracy of the
15 chart. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 42.

16 43. To the extent the allegations in Paragraph 43 are legal conclusions and
17 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
18 required, Amazon denies the allegations in Paragraph 43.

19 44. To the extent the allegations in Paragraph 44 are legal conclusions and
20 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
21 required, Amazon admits that Paragraph 44 purports to describe a study, the results of which
22 speak for themselves. Except to the extent expressly admitted, Amazon denies the allegations in
23 Paragraph 44.

24 45. To the extent the allegations in Paragraph 45 are legal conclusions and
25 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
26 required, Amazon admits that Paragraph 45 purports to describe an article in Jumpstart, which
27

1 speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations in
2 Paragraph 45.

3 46. To the extent the allegations in Paragraph 46 are legal conclusions and
4 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
5 required, Amazon denies the allegations in Paragraph 46.

6 47. To the extent the allegations in Paragraph 47 are legal conclusions and
7 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
8 required, Amazon denies the allegations in Paragraph 47.

9 48. To the extent the allegations in Paragraph 48 are legal conclusions and
10 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
11 required, Amazon admits that Paragraph 48 selectively quotes from a New Republic article,
12 which speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations
13 in Paragraph 48, and specifically denies the substance of the quoted language.

14 49. To the extent the allegations in Paragraph 49 are legal conclusions and
15 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
16 required, Amazon admits that Paragraph 49 selectively quotes from a Marketplace Pulse article
17 and summarizes a Techwire Asia article, which speak for themselves. Except to the extent
18 expressly admitted, Amazon denies the allegations in Paragraph 49, and specifically denies the
19 substance of the quoted language.

20 50. Amazon denies the allegations in Paragraph 50. There are low barriers to entry in
21 retail, as demonstrated by the tens of thousands of retail stores across the United States, the ease
22 with which physical stores have expanded online, and the number of new marketplaces that have
23 emerged. E-commerce has reduced barriers to entry, with companies like Shopify and Channel
24 Advisor facilitating retailers' entry and expansion online. Sales through Amazon's store
25 represent only a small percentage of the intensely competitive U.S. retail industry, where
26 customers switch seamlessly between online and offline shopping, with most sales still made
27 through physical stores that sell identical products to those offered online. Retail is one of the

1 least concentrated industries in the United States, with customers shopping and purchasing
2 across many different retailers and stores.

3 51. Amazon admits that Plaintiffs purport to bring a class action alleging violations of
4 federal antitrust law and the antitrust law of California. The Court dismissed Plaintiffs' claim
5 under the antitrust law of California. *Frame-Wilson*, 2023 WL 2632513, at *7. Amazon denies
6 that this case can be maintained as a class action. Amazon also admits that another putative class
7 action, *De Coster v. Amazon.com, Inc.*, No. 2:21-cv-693-RSM (W.D. Wash.), has been brought
8 in this District and is pending before this Court. Amazon admits that Amazon's U.S. store's
9 Conditions of Use for consumers contained an arbitration clause at the time the lawsuit was
10 originally filed, but that Amazon removed the arbitration clause prior to the filing of the
11 Complaint. Amazon lacks knowledge or information sufficient to form a belief as to why
12 Plaintiffs' counsel filed (at least) two separate actions and therefore denies those allegations.
13 Except to the extent expressly admitted, Amazon denies the remaining allegations in Paragraph
14 51.

15 52. Amazon denies the allegations in Paragraph 52 and specifically denies that this
16 case can be maintained as a class action.

17 53. Amazon admits that Plaintiffs contend that Class Products consist of
18 approximately 340 million consumer products offered by Amazon's third-party sellers. Except
19 to the extent expressly admitted, Amazon denies the allegations in Paragraph 53 and specifically
20 denies that this case can be maintained as a class action.

21 54. To the extent the allegations in Paragraph 54 are legal conclusions and
22 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
23 required, Amazon admits that Paragraph 54 purports to set forth Plaintiffs' definition of Class
24 Products. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph
25 54 and specifically denies that this case can be maintained as a class action.

26 55. Amazon admits that Paragraph 55 selectively quotes and refers to the MFPP,
27 which speaks for itself. Amazon further admits that it takes action to enforce the MFPP,

1 including to prevent price gouging by third-party sellers when they offer goods for sale in
2 Amazon's U.S. store. Except to the extent expressly admitted, Amazon denies the allegations in
3 Paragraph 55.

4 56. To the extent the allegations in Paragraph 56 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
6 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
7 allegations relating to sellers' conduct in other sales channels and therefore denies them.
8 Amazon denies the remaining allegations in Paragraph 56.

9 57. Amazon denies the allegations in Paragraph 57.

10 58. Amazon denies the allegations in Paragraph 58.

11 59. Amazon denies the allegations in Paragraph 59, including the allegations
12 concerning the price practices of other retailers. The retail landscape is vigorously competitive
13 across channels (offline, online, omni-channel), with brick-and-mortar stores competing with
14 online stores for sales. There is also intense price competition, with consumers using their
15 smartphones to compare prices at other physical and online stores.

16 60. To the extent the allegations in Paragraph 60 are legal conclusions and
17 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
18 required, Amazon denies the allegations in Paragraph 60.

19 61. To the extent the allegations in Paragraph 61 are legal conclusions and
20 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
21 required, Amazon admits that Plaintiffs purport to plead subject matter jurisdiction pursuant to
22 28 U.S.C. §§ 1331, 1337, and 15 U.S.C. § 15(a). Except to the extent expressly admitted,
23 Amazon denies the allegations in Paragraph 61.

24 62. To the extent the allegations in Paragraph 62 are legal conclusions and
25 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
26 required, Amazon admits that Plaintiffs purport to plead subject matter jurisdiction pursuant to
27

1 28 U.S.C. § 1332(d). Except to the extent expressly admitted, Amazon denies the allegations in
2 Paragraph 62.

3 63. To the extent the allegations in Paragraph 63 are legal conclusions and
4 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
5 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
6 Plaintiffs' residencies and therefore denies them. Amazon denies the remaining allegations in
7 Paragraph 63.

8 64. To the extent the allegations in Paragraph 64 are legal conclusions and
9 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
10 required, Amazon admits that one of its two headquarters is in Seattle, Washington, and it does
11 business in Washington and has registered with the Washington Secretary of State. Except to the
12 extent expressly admitted, Amazon denies the allegations in Paragraph 64.

13 65. To the extent the allegations in Paragraph 65 are legal conclusions and
14 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
15 required, Amazon admits that Plaintiffs purports to plead venue pursuant to 28 U.S.C.
16 § 1391(b)(1) and (2). Except to the extent expressly admitted, Amazon denies the allegations in
17 Paragraph 65.

18 66. To the extent the allegations in Paragraph 68 are legal conclusions and
19 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
20 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
21 allegations in Paragraph 66 relating to purchases that Plaintiff made outside of Amazon's store
22 and therefore denies them. Amazon denies the remaining allegations in Paragraph 66, including
23 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
24 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
25 Amazon's store.

26 67. To the extent the allegations in Paragraph 68 are legal conclusions and
27 characterizations, no responsive pleading is required. Insofar as any responsive pleading is

1 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
2 allegations in Paragraph 67 relating to purchases that Plaintiff made outside of Amazon's store
3 and therefore denies them. Amazon denies the remaining allegations in Paragraph 67, including
4 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
5 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
6 Amazon's store.

7 68. To the extent the allegations in Paragraph 68 are legal conclusions and
8 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
9 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
10 allegations in Paragraph 68 relating to purchases that Plaintiff made outside of Amazon's store
11 and therefore denies them. Amazon denies the remaining allegations in Paragraph 68, including
12 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
13 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
14 Amazon's store.

15 69. To the extent the allegations in Paragraph 69 are legal conclusions and
16 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
17 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
18 allegations in Paragraph 69 relating to purchases that Plaintiff made outside of Amazon's store
19 and therefore denies them. Amazon denies the remaining allegations in Paragraph 69, including
20 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
21 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
22 Amazon's store.

23 70. To the extent the allegations in Paragraph 70 are legal conclusions and
24 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
25 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
26 allegations in Paragraph 70 relating to purchases that Plaintiff made outside of Amazon's store
27 and therefore denies them. Amazon denies the remaining allegations in Paragraph 70, including

1 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
2 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
3 Amazon's store.

4 71. To the extent the allegations in Paragraph 71 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
6 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
7 allegations in Paragraph 71 relating to purchases that Plaintiff made outside of Amazon's store
8 and therefore denies them. Amazon denies the remaining allegations in Paragraph 71, including
9 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
10 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
11 Amazon's store.

12 72. To the extent the allegations in Paragraph 72 are legal conclusions and
13 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
14 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
15 allegations in Paragraph 72 relating to purchases that Plaintiff made outside of Amazon's store
16 and therefore denies them. Amazon denies the remaining allegations in Paragraph 72, including
17 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
18 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
19 Amazon's store.

20 73. To the extent the allegations in Paragraph 73 are legal conclusions and
21 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
22 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
23 allegations in Paragraph 73 relating to purchases that Plaintiff made outside of Amazon's store
24 and therefore denies them. Amazon denies the remaining allegations in Paragraph 73, including
25 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
26 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
27 Amazon's store.

1 74. To the extent the allegations in Paragraph 74 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
4 allegations in Paragraph 74 relating to purchases that Plaintiff made outside of Amazon's store
5 and therefore denies them. Amazon denies the remaining allegations in Paragraph 74, including
6 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
7 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
8 Amazon's store.

9 75. To the extent the allegations in Paragraph 75 are legal conclusions and
10 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
11 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations in Paragraph 75 relating to purchases that Plaintiff made outside of Amazon's store
13 and therefore denies them. Amazon denies the remaining allegations in Paragraph 75, including
14 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
15 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
16 Amazon's store.

17 76. To the extent the allegations in Paragraph 76 are legal conclusions and
18 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
19 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
20 allegations in Paragraph 76 relating to purchases that Plaintiff made outside of Amazon's store
21 and therefore denies them. Amazon denies the remaining allegations in Paragraph 76, including
22 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
23 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
24 Amazon's store.

25 77. To the extent the allegations in Paragraph 77 are legal conclusions and
26 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
27 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the

1 allegations in Paragraph 77 relating to purchases that Plaintiff made outside of Amazon's store
2 and therefore denies them. Amazon denies the remaining allegations in Paragraph 77, including
3 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
4 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
5 Amazon's store.

6 78. To the extent the allegations in Paragraph 78 are legal conclusions and
7 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
8 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
9 allegations in Paragraph 78 relating to purchases that Plaintiff made outside of Amazon's store
10 and therefore denies them. Amazon denies the remaining allegations in Paragraph 78, including
11 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
12 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
13 Amazon's store.

14 79. To the extent the allegations in Paragraph 79 are legal conclusions and
15 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
16 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
17 allegations in Paragraph 79 relating to purchases that Plaintiff made outside of Amazon's store
18 and therefore denies them. Amazon denies the remaining allegations in Paragraph 79, including
19 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
20 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
21 Amazon's store.

22 80. To the extent the allegations in Paragraph 80 are legal conclusions and
23 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
24 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
25 allegations in Paragraph 80 relating to purchases that Plaintiff made outside of Amazon's store
26 and therefore denies them. Amazon denies the remaining allegations in Paragraph 80, including
27 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff

1 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
2 Amazon's store.

3 81. To the extent the allegations in Paragraph 81 are legal conclusions and
4 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
5 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
6 allegations in Paragraph 81 relating to purchases that Plaintiff made outside of Amazon's store
7 and therefore denies them. Amazon denies the remaining allegations in Paragraph 81, including
8 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
9 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
10 Amazon's store.

11 82. To the extent the allegations in Paragraph 82 are legal conclusions and
12 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
13 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
14 allegations in Paragraph 82 relating to purchases that Plaintiff made outside of Amazon's store
15 and therefore denies them. Amazon denies the remaining allegations in Paragraph 82, including
16 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
17 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
18 Amazon's store.

19 83. To the extent the allegations in Paragraph 83 are legal conclusions and
20 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
21 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
22 allegations in Paragraph 83 relating to purchases that Plaintiff made outside of Amazon's store
23 and therefore denies them. Amazon denies the remaining allegations in Paragraph 83, including
24 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
25 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
26 Amazon's store.

1 84. To the extent the allegations in Paragraph 84 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
4 allegations in Paragraph 84 relating to purchases that Plaintiff made outside of Amazon's store
5 and therefore denies them. Amazon denies the remaining allegations in Paragraph 84, including
6 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
7 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
8 Amazon's store.

9 85. To the extent the allegations in Paragraph 85 are legal conclusions and
10 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
11 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations in Paragraph 85 relating to purchases that Plaintiff made outside of Amazon's store
13 and therefore denies them. Amazon denies the remaining allegations in Paragraph 85, including
14 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
15 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
16 Amazon's store.

17 86. To the extent the allegations in Paragraph 86 are legal conclusions and
18 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
19 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
20 allegations in Paragraph 86 relating to purchases that Plaintiff made outside of Amazon's store
21 and therefore denies them. Amazon denies the remaining allegations in Paragraph 86, including
22 the allegation that policies that govern the offer of goods in Amazon's store caused Plaintiff
23 injury or is likely to cause Plaintiff injury in connection with the purchase of goods outside of
24 Amazon's store.

25 87. To the extent the allegations in Paragraph 87 are legal conclusions and
26 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
27 required, Amazon admits that Paragraph 87 selectively quotes from a letter from the Retail

1 Industry Leaders Association to the Federal Trade Commission, which speaks for itself. Except
2 to the extent expressly admitted, Amazon denies the allegations in Paragraph 87, and specifically
3 denies the substance of the quoted language.

4 88. Amazon admits that one of its two headquarters is in Seattle, Washington.
5 Amazon admits that it sells products as a first-party seller in its U.S. store and also allows third-
6 party sellers to sell certain physical goods in its U.S. store. Amazon further admits that the BSA
7 requires third-party sellers to follow Amazon policies, including the MFPP. Except to the extent
8 expressly admitted, Amazon denies the allegations in Paragraph 88.

9 89. Amazon denies the allegations in Paragraph 89.

10 90. Amazon admits that it works with independent sellers, authors, content creators,
11 developers, delivery businesses, and IT solution providers. The retail landscape is vigorously
12 competitive across channels (offline, online, omni-channel), with brick-and-mortar stores
13 competing with online stores for sales. The largest retailer in the United States (and the world) is
14 Walmart. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph
15 90.

16 91. Amazon admits that Paragraph 91 quotes from an article regarding retailer
17 Molson Hart, which speaks for itself. Except to the extent expressly admitted, Amazon denies
18 the allegations in Paragraph 91, and specifically denies the substance of the quoted language.

19 92. Amazon admits that Amazon Prime is a paid-membership program that entitles
20 customers to certain benefits, including free shipping on eligible products as well as access to
21 Prime Video and Amazon Music Prime. Amazon admits that Paragraph 92 summarizes articles
22 and surveys, which speak for themselves. Except to the extent expressly admitted, Amazon
23 denies the allegations in Paragraph 92.

24 93. Amazon admits that it sells a wide-range of consumer products through its U.S.
25 store, including Amazon-branded products and that it also allows third-party sellers to sell
26 certain physical goods in its store. Except to the extent expressly admitted, Amazon denies the
27 allegations in Paragraph 93.

1 94. Amazon admits that Paragraph 94 selectively quotes from several reports of the
2 House subcommittee and German competition authorities, which speak for themselves. Amazon
3 admits that it sells a wide-range of consumer products through its U.S. store, including Amazon-
4 branded products and that it also allows third-party sellers to sell certain physical goods in its
5 store. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 94,
6 and specifically denies the substance of the quoted language.

7 95. Amazon admits that Paragraph 95 selectively quotes from a report by the House
8 Antitrust Subcommittee, a CNBC report, and a shareholder letter, which speak for themselves.
9 Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 95.

10 96. Amazon admits that Paragraph 96 selectively quotes from a shareholder letter,
11 which speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations
12 in Paragraph 96.

13 97. Amazon admits that sometimes Amazon may sell the same product in its store as
14 a third-party seller. Amazon further admits that selection for the Featured Offer takes into
15 account multiple factors such as price, delivery speed, and seller reliability, with a goal of
16 highlighting for customers an offer that Amazon believes they would most likely choose if they
17 compared all offers. Amazon further admits that, in addition to the Featured Offer, other
18 competing offers are available on the single detail page, including in the all offers display.
19 Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 97.

20 98. To the extent the allegations in Paragraph 98 are legal conclusions and
21 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
22 required, Amazon denies the allegations in Paragraph 98.

23 99. Amazon denies the allegations in Paragraph 99.

24 100. The barriers to entry in retail are low. Amazon denies the allegations in
25 Paragraph 100.

26 101. Amazon admits that, like any retailer, it collects information concerning the use of
27 its store. Amazon further admits that Paragraph 101 selectively quotes from a report by the
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1 House Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
2 Amazon denies the allegations in Paragraph 101.

3 102. Amazon admits that Paragraph 102 purports to summarize research by Google
4 and an article in Business Insider, which speak for themselves. Except to the extent expressly
5 admitted, Amazon denies the allegations in Paragraph 102.

6 103. To the extent the allegations in Paragraph 103 are legal conclusions and
7 characterizations, no responsive pleading is required. In addition, the Court dismissed Plaintiffs'
8 *per se* claim without leave to amend. *Frame-Wilson*, 2023 WL 2632513, at *7. Insofar as any
9 responsive pleading is required, Amazon denies the allegations in Paragraph 103.

10 104. To the extent the allegations in Paragraph 104 are legal conclusions and
11 characterizations, no responsive pleading is required. In addition, the Court dismissed Plaintiffs'
12 *per se* claim without leave to amend. *Frame-Wilson*, 2023 WL 2632513, at *7. Insofar as any
13 responsive pleading is required, Amazon denies the allegations in Paragraph 104.

14 105. To the extent the allegations in Paragraph 105 are legal conclusions and
15 characterizations, no responsive pleading is required. In addition, the Court dismissed Plaintiffs'
16 *per se* claim without leave to amend. *Frame-Wilson*, 2023 WL 2632513, at *7. Insofar as any
17 responsive pleading is required, Amazon denies the allegations in Paragraph 105.

18 106. To the extent the allegations in Paragraph 106 are legal conclusions and
19 characterizations, no responsive pleading is required. In addition, the Court dismissed Plaintiffs'
20 *per se* claim without leave to amend. *Frame-Wilson*, 2023 WL 2632513, at *7. Insofar as any
21 responsive pleading is required, Amazon denies the allegations in Paragraph 106.

22 107. To the extent the allegations in Paragraph 107 are legal conclusions and
23 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
24 required, Amazon denies the allegations in Paragraph 107.

25 108. To the extent the allegations in Paragraph 108 are legal conclusions and
26 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
27 required, Amazon denies the allegations in Paragraph 108.

1 109. To the extent the allegations in Paragraph 109 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon denies the allegations in Paragraph 109.

4 110. Amazon lacks knowledge or information sufficient to form a belief as to the truth
5 of the allegations in Paragraph 110 regarding eBay and therefore denies them. Amazon admits
6 that Germany's Federal Cartel Office investigated the parity provision for Amazon's German
7 store in 2013 and that Paragraph 110 selectively quotes from that Office's report, which speaks
8 for itself. Plaintiffs' claims here relate solely to their purchase of goods in the United States
9 outside of Amazon's U.S. store. Except to the extent expressly admitted, Amazon denies the
10 remaining allegations in Paragraph 110, and specifically denies the substance of the quoted
11 language.

12 111. To the extent the allegations in Paragraph 111 are legal conclusions and
13 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
14 required, Amazon admits that Paragraph 111 selectively quotes from a report by the German
15 Federal Cartel Office, which speaks for itself. Plaintiffs' claims here relate solely to their
16 purchase of goods in the United States outside of Amazon's U.S. store. Except to the extent
17 expressly admitted, Amazon denies the allegations in Paragraph 111, and specifically denies the
18 substance of the quoted language.

19 112. To the extent the allegations in Paragraph 112 are legal conclusions and
20 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
21 required, Amazon admits that Paragraph 112 selectively quotes from a report by the German
22 Federal Cartel Office, which speaks for itself. Plaintiffs' claims here relate solely to their
23 purchase of goods in the United States outside of Amazon's U.S. store. Except to the extent
24 expressly admitted, Amazon denies the allegations in Paragraph 112, and specifically denies the
25 substance of the quoted language. The Court in this case held that Plaintiffs have failed to state a
26 claim for horizontal price-fixing under U.S. antitrust law. *Frame-Wilson*, 2023 WL 2632513, at
27 *7.

1 113. To the extent the allegations in Paragraph 113 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon admits that Paragraph 113 selectively quotes from a report by the German
4 Federal Cartel Office, which speaks for itself. Plaintiffs' claims here relate solely to their
5 purchase of goods in the United States outside of Amazon's U.S. store. Except to the extent
6 expressly admitted, Amazon denies the allegations in Paragraph 113, and specifically denies the
7 substance of the quoted language. The Court in this case held that Plaintiffs have failed to state a
8 claim for horizontal price-fixing under U.S. antitrust law. *Frame-Wilson*, 2023 WL 2632513, at
9 *7.

10 114. To the extent the allegations in Paragraph 114 are legal conclusions and
11 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
12 required, Amazon admits that Paragraph 114 selectively quotes from a report by the German
13 Federal Cartel Office, which speaks for itself. Plaintiffs' claims here relate solely to their
14 purchase of goods in the United States outside of Amazon's U.S. store. Except to the extent
15 expressly admitted, Amazon denies the allegations in Paragraph 114, and specifically denies the
16 substance of the quoted language.

17 115. Amazon admits that it removed the parity provision from its agreements with
18 third-party sellers in Europe in 2013. Amazon admits that the parity provision was the subject of
19 investigations conducted by agencies of the United Kingdom and Germany in 2013. Plaintiffs'
20 claims relate solely to the United States; the parity provision was removed in the United States in
21 March 2019. Except to the extent expressly admitted, Amazon denies the allegations in
22 Paragraph 115.

23 116. Amazon admits that Paragraph 116 purports to summarize an analysis by
24 Evercore ISI, which speaks for itself. Amazon has made substantial innovations and investments
25 to support third-party sellers, resulting in their experiencing massive growth in Amazon's U.S.
26 store. Amazon further admits that for each item sold in its U.S. store, it retains a "referral fee,"
27

1 which varies based on the item sold. Except to the extent expressly admitted, Amazon denies the
2 allegations in Paragraph 116.

3 117. Amazon admits that third-party sellers pay a registration fee to sell in Amazon's
4 U.S. store, with the fee dependent on the plan selected by the seller. Third-party sellers also pay
5 Amazon certain fees in exchange for services, including optional services, provided by Amazon.
6 Amazon further admits that Paragraph 117 quotes from an article, which speaks for itself.
7 Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 117, and
8 specifically denies the substance of the quoted language. Most of the fees that the Plaintiffs
9 describe are fees for optional services, services that sellers would have to otherwise pay for if
10 they did not have Amazon perform those services (for example, storing, packing, and shipping).
11 These fees are fees for services that a seller has the option of having Amazon perform, a third
12 party perform, or the seller perform on its own.

13 118. Amazon admits that when an Amazon customer buys an item listed by a third-
14 party seller, the customer pays Amazon directly; Amazon receives a referral and sometimes other
15 fees; and remits payment to the third party-seller. Except to the extent expressly admitted,
16 Amazon denies the allegations in Paragraph 118.

17 119. Amazon admits that Paragraph 119 quotes from an article, which speaks for itself.
18 Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 119, and
19 specifically denies the substance of the quoted language.

20 120. Amazon admits that Paragraph 120 quotes from an article, which speaks for itself.
21 Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 120, and
22 specifically denies the substance of the quoted language.

23 121. Amazon admits that it offers sellers the opportunity to purchases ads and that
24 many sellers avail themselves of the opportunity to purchase ads, although ads are not required to
25 sell in Amazon's U.S. store. Amazon further admits that Paragraph 121 selectively quotes from
26 and summarizes articles, which speak for themselves. Except to the extent expressly admitted,
27

1 Amazon denies the allegations in Paragraph 121, and specifically denies the substance of the
2 quoted language.

3 122. Amazon admits that Paragraph 122 selectively quotes and describes an article,
4 which speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations
5 in Paragraph 122, and specifically denies the substance of the quoted language.

6 123. Amazon denies the allegations in Paragraph 123.

7 124. Amazon admits that admits that Paragraph 124 selectively quotes from a report by
8 Retail Dive and an article in Statista, which speak for themselves. Except to the extent expressly
9 admitted, Amazon denies the allegations in Paragraph 124, and specifically denies the substance
10 of the quoted language.

11 125. Amazon admits that third-party sellers pay Amazon certain fees in exchange for
12 services, including optional services, provided by Amazon. Amazon further admits that
13 Paragraph 125 quotes from various articles, which speak for themselves. Amazon admits that it
14 seeks to prevent price gouging of customers in its store, in accordance with the MFPP, including
15 by monitoring prices on and off Amazon and sending notices to sellers. Amazon lacks
16 knowledge or information sufficient to form a belief as to the truth of the allegations concerning
17 the pricing practices of individual sellers and therefore denies them. Except to the extent
18 expressly admitted, Amazon denies the remaining allegations in Paragraph 125, and specifically
19 denies the substance of the quoted language.

20 126. Amazon admits that Paragraph 126 purports to quote and summarize an article
21 and a letter from Senator Richard Blumenthal to the FTC, which speak for themselves. Except to
22 the extent expressly admitted, Amazon denies the allegations in Paragraph 126, and specifically
23 denies the substance of the quoted language.

24 127. Amazon admits that the parity provision was removed from the BSA for
25 European sellers in 2013 and removed from the BSA for U.S. sellers in March 2019; prior to its
26 removal the provision was rarely enforced. Amazon also admits that Senator Blumenthal wrote a
27 letter to the FTC in December 2018, and that Paragraph 127 purports to quote various articles,

1 which speak for themselves. Except to the extent expressly admitted, Amazon denies the
2 allegations in Paragraph 127, and specifically denies the substance of the quoted language.

3 128. Amazon admits that the parity provision was removed from the BSA in March
4 2019 for U.S. sellers; prior to its removal, the provision was rarely enforced. Amazon further
5 admits that Paragraph 128 quotes from an article, which speaks for itself. Amazon lacks
6 knowledge or information sufficient to form a belief as to the truth of the allegations concerning
7 the pricing practices of individual sellers and therefore denies them. Except to the extent
8 expressly admitted, Amazon denies the remaining allegations in Paragraph 128, and specifically
9 denies the substance of the quoted language.

10 129. Amazon denies the allegations in Paragraph 129.

11 130. Amazon admits that Paragraph 130 purports to summarize an article, which
12 speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations in
13 Paragraph 130.

14 131. Amazon admits that Paragraph 131 purports to summarize an article which speaks
15 for itself. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph
16 131.

17 132. Amazon lacks knowledge or information sufficient to form a belief as to the truth
18 of the allegations in Paragraph 132 concerning the percentage of Mr. Hart's sales that come from
19 sales in Amazon's U.S. store and therefore denies them. Amazon denies the remaining
20 allegations in Paragraph 132.

21 133. To the extent the allegations in Paragraph 133 are legal conclusions and
22 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
23 required, Amazon denies the allegations in Paragraph 133. Plaintiffs' allegations disregard the
24 realities of retail competition: all retail—online, offline, and omni-channel—compete for the
25 same sales. Consumers may purchase the same product through multiple retail channels.
26 According to the U.S. Census Bureau, for the fourth quarter of 2022, 84 percent of retail took
27

1 place offline; prices online and offline have largely converged, demonstrating that consumers
2 substitute across channels.

3 134. Amazon admits that Paragraph 134 describes an analysis performed by Profitero,
4 which speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations
5 in Paragraph 134. Plaintiffs' allegations disregard the realities of retail competition: all retail—
6 online, offline, and omni-channel—compete for the same sales. Consumers may purchase the
7 same product through multiple retail channels. According to the U.S. Census Bureau, for the
8 fourth quarter of 2022, 84 percent of retail took place offline; prices online and offline have
9 largely converged, demonstrating that consumers substitute across channels.

10 135. Amazon admits that Paragraph 135 purports to summarize articles, which speak
11 for themselves. Amazon lacks knowledge or information sufficient to form a belief as to the
12 truth of the allegations in Paragraph 135 regarding the third-party seller described in the Profitero
13 report and therefore denies them. Except to the extent expressly admitted, Amazon denies the
14 remaining allegations in Paragraph 135. Amazon focuses on building consumer trust through
15 everyday low prices—not short term or per-unit profitability. Amazon's mission is to be Earth's
16 most customer-centric company. Amazon competes vigorously every day to provide its
17 customers lower prices, more selection, and better service.

18 136. To the extent the allegations in Paragraph 136 are legal conclusions and
19 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
20 required, Amazon denies the allegations in Paragraph 136.

21 137. Amazon admits that many third-party sellers who sell goods in Amazon's U.S.
22 store also sell goods through other retail channels. Amazon also admits that about two million
23 third-party sellers offer goods in Amazon's U.S. store. Amazon further admits that in 2000,
24 Amazon opened its U.S. store—the U.S. Amazon Marketplace—to offer its marketplace services
25 to third-party sellers. Before that time, Amazon only sold goods to consumers as a retailer.
26 Amazon further admits that the retail industry is fiercely competitive, and Amazon is just one of
27 tens of thousands of retailers—existing online, offline, and omni-channel—competing for

1 consumers' business. According to the U.S. Census Bureau, for the first quarter of 2023, only
2 15.1 percent of consumer retail purchases take place through online stores, with the
3 overwhelming majority taking place in physical stores. Except to the extent expressly admitted,
4 Amazon denies the allegations in Paragraph 137.

5 138. To the extent the allegations in Paragraph 138 are legal conclusions and
6 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
7 required, Amazon denies the allegations in Paragraph 138.

8 139. Amazon admits that it seeks to feature offers that have competitive prices and to
9 prevent price gouging by third-party sellers when they offer goods for sale in Amazon's U.S.
10 store. Except to the extent expressly admitted, Amazon denies the allegations in 139.

11 140. Amazon denies the allegations in Paragraph 140.

12 141. The Fair Pricing Policy prohibits prices on Amazon that are "significantly higher"
13 than prices on or off Amazon. In other words, it protects consumers in Amazon's U.S. store
14 from price gouging. The Fair Pricing Policy does not reference the price set by a single third-
15 party seller outside of Amazon's U.S. store. The Fair Pricing Policy expressly states that pricing
16 practices that harm customer trust include "Setting a price on a product or service that is
17 significantly higher than recent prices offered on or off Amazon," as well as "Setting a reference
18 price on a product or service that misleads customers"; "Selling multiple units of a product for
19 more per unit than that of a single unit of the same product"; "Setting a shipping fee on a product
20 that is excessive." Except to the extent expressly admitted, Amazon denies the allegations in
21 Paragraph 141.

22 142. Amazon admits that it regularly enforces the Marketplace Fair Pricing Policy.
23 This policy is not an MFN; it does not compare the prices of a particular seller inside and outside
24 Amazon's U.S. store. Instead, the Fair Pricing Policy prohibits price gouging and other practices
25 that harm customer trust. Except to the extent expressly admitted, Amazon denies the allegations
26 in Paragraph 142.

1 143. To the extent the allegations in Paragraph 143 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon denies the allegations in Paragraph 143.

4 144. To the extent the allegations in Paragraph 144 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
6 required, Amazon denies the allegations in Paragraph 144.

7 145. To the extent the allegations in Paragraph 145 are legal conclusions and
8 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
9 required, Amazon denies the allegations in Paragraph 145. The Court, in deciding Plaintiffs'
10 motion to dismiss the Complaint, held that Plaintiffs failed to state a claim based on an unlawful
11 agreement between competitors. *Frame-Wilson*, 2023 WL 4240826, at *5.

12 146. To the extent the allegations in Paragraph 146 are legal conclusions and
13 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
14 required, Paragraph 146 purports to describe an article, which speaks for itself. Except to the
15 extent expressly admitted, Amazon denies the allegations in Paragraph 146.

16 147. Amazon lacks knowledge or information sufficient to form a belief as to the truth
17 of the allegations and the charts in Paragraph 147 and therefore denies them.

18 148. Amazon lacks knowledge or information sufficient to form a belief as to the truth
19 of the allegations and the chart in Paragraph 148 and therefore denies them.

20 149. Amazon lacks knowledge or information sufficient to form a belief as to the truth
21 of the allegations in Paragraph 149 and therefore denies them.

22 150. Amazon lacks knowledge or information sufficient to form a belief as to the truth
23 of the allegations and chart in Paragraph 150 and therefore denies them.

24 151. Amazon lacks knowledge or information sufficient to form a belief as to the truth
25 of the allegations and chart in Paragraph 151 and therefore denies them.

26 152. Amazon lacks knowledge or information sufficient to form a belief as to the truth
27 of the allegations and chart in Paragraph 152 and therefore denies them.

1 153. Amazon lacks knowledge or information sufficient to form a belief as to the truth
2 of the allegations and chart in Paragraph 153 and therefore denies them.

3 154. To the extent the allegations in Paragraph 154 are legal conclusions and
4 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
5 required, Amazon admits that Paragraph 154 quotes from several articles, which speak for
6 themselves. Except to the extent expressly admitted, Amazon denies the allegations in
7 Paragraph 154, and specifically denies the substance of the quoted language.

8 155. Amazon admits that Paragraph 155 selectively quotes and cites various articles,
9 which speak for themselves. Except to the extent expressly admitted, Amazon denies the
10 allegations in Paragraph 155, and specifically denies the substance of the quoted language. Sales
11 by third-party sellers on Amazon have grown because, among other reasons, Amazon helped
12 sellers compete by investing in and offering them tools that allowed them to manage inventory,
13 process payments, track shipments, and create reports. Through Fulfillment by Amazon and the
14 Prime membership program, Amazon also meaningfully improved the customer experience of
15 buying from third-party sellers.

16 156. To the extent the allegations in Paragraph 156 are legal conclusions and
17 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
18 required, Amazon denies the allegations in Paragraph 156.

19 157. To the extent the allegations in Paragraph 157 are legal conclusions and
20 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
21 required, Amazon denies the allegations in Paragraph 157. The retail landscape is intensely
22 competitive. E-commerce has reduced barriers to entry, with companies like Shopify and
23 Channel Advisor facilitating retailers' entry and expansion online. For example, in 2020, nearly
24 \$120 billion in sales were processed through Shopify alone.¹ Sales through Amazon represent
25 only a small percentage of the intensely competitive U.S. retail industry, where customers switch
26

27 ¹ Do Good Things, *The Future of eCommerce: Shopify Online Store 2.0* (July 19, 2021),
<https://www.dogoodthings.co.nz/blog/ecommerce-trends-shopify-online-store-2-0>.

1 between online and offline shopping, with most sales still made through physical stores that sell
2 identical products to those offered online. There is also intense price competition, with
3 consumers using their smartphones in stores to compare prices at other physical and online
4 stores.

5 158. Amazon admits that Paragraph 158 selectively quotes and cites from various
6 articles, which speak for themselves. Amazon admits that like any retailer, it collects
7 information concerning the use of its U.S. store. Except to the extent expressly admitted,
8 Amazon denies the allegations in Paragraph 158, and specifically denies the substance of the
9 quoted language.

10 159. Amazon admits that Paragraph 159 selectively cites various articles, which speak
11 for themselves. Amazon further admits that it has made substantial investments to set up its own
12 distribution network, including warehouses across the country, to ensure customers receive their
13 purchased goods quickly and efficiently. Amazon lacks knowledge or information sufficient to
14 form a belief as to the truth of the allegations in Paragraph 159 regarding DHL and other
15 shipping and fulfillment services and therefore denies them. Except to the extent expressly
16 admitted, Amazon denies the remaining allegations in Paragraph 159.

17 160. To the extent the allegations in Paragraph 160 are legal conclusions and
18 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
19 required, Amazon admits that it has countless competitors, including Walmart—the largest
20 retailer in the United States (and the world). Third-party sellers thrive in Amazon’s U.S. store
21 because Amazon has helped third-party sellers compete by innovating and investing in and
22 offering them selling tools, including tools to help sellers manage inventory, process payments,
23 track shipments, and create reports. Amazon’s innovation and investment in Fulfillment by
24 Amazon and the Prime membership program meaningfully improved the customer experience of
25 buying from independent sellers, contributing to their success in Amazon’s U.S. store. Except to
26 the extent expressly admitted, Amazon denies the allegations in Paragraph 160.

1 161. To the extent the allegations in Paragraph 161 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon denies the allegations in Paragraph 161. The Online Retail Sales Market is
4 not a relevant antitrust market.

5 162. To the extent the allegations in Paragraph 162 are legal conclusions and
6 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
7 required, Amazon denies the allegations in Paragraph 162. The alleged e-commerce submarkets
8 are not relevant antitrust markets.

9 163. To the extent the allegations in Paragraph 163 are legal conclusions and
10 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
11 required, Amazon admits that Paragraph 163 selectively cites from a 2020 Report from the
12 Subcommittee on Antitrust, Commercial, and Administrative Law, which speaks for itself.
13 Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 163.
14 Walmart is the largest retailer in the United States (and the world).

15 164. To the extent the allegations in Paragraph 164 are legal conclusions and
16 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
17 required, Amazon denies the allegations in Paragraph 164.

18 165. To the extent the allegations in Paragraph 165 are legal conclusions and
19 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
20 required, Amazon denies the allegations in Paragraph 165. Neither the former Parity Provision
21 nor the Fair Pricing Policy establish a floor price. The Parity Provision prohibited sellers in
22 Amazon's U.S. store from discriminating against Amazon customers on the basis of price, and
23 the Fair Pricing Policy prohibits price gouging in Amazon's U.S. store.

24 166. To the extent the allegations in Paragraph 166 are legal conclusions and
25 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
26 required, Amazon denies the allegations in Paragraph 166.

1 167. Amazon admits that the parity provision was removed from the BSA in March
2 2019, including because it was rarely enforced. Except to the extent expressly admitted,
3 Amazon denies the allegations in Paragraph 167.

4 168. Amazon admits that in Summer 2019, the Washington Post reported that the FTC
5 planned to conduct a broad investigation into “large technology companies.” Amazon admits
6 that Paragraph 168 selectively quotes from a Washington Post news article, which speaks for
7 itself. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
8 allegations in Paragraph 168 regarding an FTC special task force and therefore denies them.
9 Except to the extent expressly admitted, Amazon denies the remaining allegations in Paragraph
10 168.

11 169. Amazon admits that Paragraph 169 selectively summarizes an article from VOX
12 and selectively quotes or refers to a Bloomberg article, which speak for themselves. It is
13 Amazon’s belief that the FTC has spoken to competitors of Amazon, but Amazon lacks
14 knowledge or information sufficient to form a belief as to the identities of those competitors and
15 therefore denies them. Amazon lacks knowledge or information sufficient to form a belief as to
16 the truth of the remaining allegations in Paragraph 169 regarding the FTC investigation and
17 therefore denies them. Except to the extent expressly admitted, Amazon denies the remaining
18 allegations in Paragraph 169.

19 170. Amazon admits that Paragraph 170 selectively quotes from a report by the House
20 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
21 Amazon denies the allegations in Paragraph 170, and specifically denies the substance of the
22 quoted language.

23 171. Amazon admits that Paragraph 171 selectively quotes from a report by the House
24 Antitrust Subcommittee, which speaks for itself. Amazon competes with brick-and-mortar stores
25 in the intensely competitive market for retail—which is one of the most competitive industries in
26 the world. Customers constantly compare prices between brick-and-mortar and online retailers
27 and stores and switch their retail purchases between such retailers and stores. The same products

1 that are offered online are also offered in brick-and-mortar stores, and, for the fourth quarter of
2 2022, nearly 84 percent of retail sales remained in physical stores. At the same time, traditional
3 retailers are creating hybrid options for reaching consumers who can order products online and
4 then pick them up at a physical store. And brick-and-mortar stores tout themselves as
5 competitors to online retailers, offering price-match guarantees that include prices offered by
6 online retailers. Accordingly, Amazon denies the allegations in Paragraph 171 regarding there
7 being separate brick-and-mortar and online retail sales markets. Amazon has a small share of the
8 retail industry in the United States, with Walmart being the largest retailer in the United States
9 (and the world). Except to the extent expressly admitted, Amazon denies the allegations in
10 Paragraph 171, and specifically denies the substance of the quoted language.

11 172. To the extent the allegations in Paragraph 172 are legal conclusions and
12 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
13 required, Amazon admits that Paragraph 172 selectively quotes from a report by the House
14 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
15 Amazon denies the allegations in Paragraph 172, and specifically denies the substance of quoted
16 language.

17 173. To the extent the allegations in Paragraph 173 are legal conclusions and
18 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
19 required, Amazon admits that Paragraph 173 selectively quotes from a report by the House
20 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
21 Amazon denies the allegations in Paragraph 173, and specifically denies the substance of the
22 quoted language. There are low barriers to entry in retail, as demonstrated by the tens of
23 thousands of retail stores across the United States, the ease with which physical stores have
24 expanded online, and the number of new marketplaces and direct-to-consumer websites that have
25 emerged in recent years. Retail is one of the least concentrated industries in the United States,
26 with customers shopping and purchasing across many different retailers and stores.
27

1 174. To the extent the allegations in Paragraph 174 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon admits that Paragraph 174 selectively cites a news article and press release by
4 the Washington State Attorney General's Office, which speak for themselves. The factual
5 allegations underlying the Washington State Attorney General's Action differ substantially from
6 the allegations here. While the allegations in this case involve Amazon's former Price Parity
7 Clause and its current Marketplace Fair Pricing Policy, which apply to all of Amazon's third-
8 party sellers, the action by the Washington State Attorney General did not concern or challenge
9 these third-party seller policies. That action involved the Sold by Amazon program, which is not
10 at issue in this case. Similarly, the investigation by Italian authorities also did not involve the
11 former Parity Provision or the Fair Pricing Policy and involved application of Italian, not U.S.,
12 antitrust laws. Except to the extent expressly admitted, Amazon denies the allegations in
13 Paragraph 174.

14 175. Amazon admits that it sells goods in its U.S. store as a first-party seller and also
15 allows third-party sellers to sell specific physical goods in its U.S. store. Amazon further admits
16 that its U.S. store is accessible to consumers throughout the United States who have Internet
17 access. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph
18 175.

19 176. To the extent the allegations in Paragraph 176 are legal conclusions and
20 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
21 required, Amazon denies the allegations in Paragraph 176. The Court dismissed Plaintiffs' *per*
22 *se* claims for failure to state a claim. *Frame-Wilson*, 2023 WL 2632513, at *5.

23 177. To the extent the allegations in Paragraph 177 are legal conclusions and
24 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
25 required, Amazon denies the allegations in Paragraph 177.

26 178. To the extent the allegations in Paragraph 178 are legal conclusions and
27 characterizations, no responsive pleading is required. Insofar as any responsive pleading is

1 required, Amazon admits that Paragraph 178 selectively quotes from an article published by
 2 Statista Research Department and webpages published by the U.S. Census Bureau, and
 3 selectively cites from an article published by the U.S. Bureau of Labor Statistics, which speak for
 4 themselves. Amazon competes with brick-and-mortar stores in the intensely competitive market
 5 for retail goods—which is one of the most competitive industries in the world. Customers
 6 constantly compare prices between brick-and-mortar and online retailers and stores and switch
 7 their retail purchases between such retailers and stores. The same products that are offered
 8 online are also offered in brick-and-mortar stores, and, for the fourth quarter of 2022,
 9 approximately 84 percent of retail sales were in physical stores. At the same time, traditional
 10 retailers are creating hybrid options for reaching consumers who can order products online and
 11 then pick them up at a physical store. And brick-and-mortar stores tout themselves as
 12 competitors to online retailers, offering price-match guarantees that include prices offered by
 13 online retailers. Except to the extent expressly admitted, Amazon denies the allegations in
 14 Paragraph 178, and specifically denies the substance of the quoted language.

15 179. To the extent the allegations in Paragraph 179 are legal conclusions and
 16 characterizations, no response is required. Insofar as any responsive pleading is required,
 17 Amazon admits that Paragraph 179 selectively quotes or refers to various articles, which speak
 18 for themselves. Except to the extent expressly admitted, Amazon denies the allegations in
 19 Paragraph 179, and specifically denies the substance of the quoted language.

20 180. Amazon admits that Paragraph 180 selectively quotes testimony given before the
 21 House Judiciary Committee, which speaks for itself. Except to the extent expressly admitted,
 22 Amazon denies the allegations in Paragraph 180, and specifically denies the substance of the
 23 quoted language. There are low barriers to entry in retail, as demonstrated by the tens of
 24 thousands of retail stores across the United States, the ease with which physical stores have
 25 expanded online, and the number of new marketplaces that have emerged. E-commerce has
 26 reduced barriers to entry, with companies like Shopify and Channel Advisor facilitating retailers'
 27 entry and expansion online. For example, in 2020, nearly \$120 billion in sales were processed

1 through Shopify alone.² Sales through Amazon represent only a small percentage of the
 2 intensely competitive U.S. retail industry, where customers switch seamlessly between online
 3 and offline shopping, with most sales still made through physical stores that sell identical
 4 products to those offered online. Retail is one of the least concentrated industries in the United
 5 States, with customers shopping and purchasing across many different retailers and stores.

6 181. Amazon admits that Paragraph 181 selectively quotes from and cites a report and
 7 various articles, which speak for themselves. Except to the extent expressly admitted, Amazon
 8 denies the allegations in Paragraph 181, and specifically denies the substance of the quoted
 9 language.

10 182. Amazon admits that it offers Prime Video and that e-books are available for sale
 11 in its store. Amazon further admits that, like any retailer, it collects information concerning the
 12 use of its store. Except to the extent expressly admitted, Amazon denies the allegations in
 13 Paragraph 182.

14 183. Amazon lacks knowledge or information sufficient to form a belief as to the truth
 15 of the allegations in Paragraph 183 and therefore denies them. As a retailer, Amazon competes
 16 with retailers both online and offline. The overwhelming majority of retail sales take place in
 17 physical stores, with the Census Bureau reporting that for the fourth quarter of 2022, online retail
 18 sales represented only 16 percent of total sales;³ moreover, physical stores offer products
 19 identical to those available through online retailers. Walmart is the largest retailer in the United
 20 States (and the world).

21 184. Amazon admits that Paragraph 184 selectively quotes from a Pew Research
 22 article, which speaks for itself. Except to the extent expressly admitted, Amazon denies the
 23 allegations in Paragraph 184, and specifically denies the substance of the quoted language. The
 24 goods that are available in online marketplaces are also available on direct-to-consumer
 25

26 ² Do Good Things, *The Future of eCommerce: Shopify Online Store 2.0* (July 19, 2021),
<https://www.dogoodthings.co.nz/blog/e-commerce-trends-shopify-online-store-2-0>.

27 ³ U.S. Census Bureau News, Quarterly Retail E-Commerce Sales (Feb. 17, 2023),
https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf.

1 websites, and in physical stores, as well as through hybrid options for consumers, and these
2 goods are reasonable substitutes for one another.

3 185. Amazon admits that Paragraph 185 selectively cites various articles, which speak
4 for themselves. Except to the extent expressly admitted, Amazon denies the allegations in
5 Paragraph 185, and specifically denies the substance of the quoted language. The same goods
6 that are available in online marketplaces are also available on direct-to-consumer websites and in
7 physical stores, as well as through hybrid for consumers, and these goods are reasonable
8 substitutes for one another.

9 186. Amazon denies the allegations in Paragraph 186. The same goods that are
10 available in online marketplaces are also available on direct-to-consumer websites and in
11 physical stores, and these goods are reasonable substitutes for one another. Further, the
12 distinction between online and offline has been blurred with omni-channel—buy online, pick up
13 at store—becoming increasingly popular with consumers.

14 187. To the extent the allegations in Paragraph 187 are legal conclusions and
15 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
16 required, Amazon denies the allegations in Paragraph 187, and specifically denies that the
17 alleged markets are relevant antitrust markets.

18 188. To the extent the allegations in Paragraph 188 are legal conclusions and
19 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
20 required, Amazon denies the allegations in Paragraph 188.

21 189. To the extent the allegations in Paragraph 189 are legal conclusions and
22 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
23 required, Amazon denies the allegations in Paragraph 189.

24 190. To the extent the allegations in Paragraph 190 are legal conclusions and
25 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
26 required, Amazon admits that Paragraph 190 selectively cites a report by the Italian competition
27 authority, which speak for itself. The investigation referenced in Paragraph 190 did not involve

1 the former Parity Provision or the Marketplace Fair Pricing Policy, or U.S. antitrust law. When
2 the Attorney General of the District of Columbia relied on allegations concerning investigations
3 by U.K. and German regulators, Judge Puig-Lugo concluded that such reliance was “misplaced”
4 because “the statements of European investigators amount to legal conclusions premised on
5 British and German legal frameworks which may or may not be consistent with the legal,
6 procedural, and evidentiary requirements applicable in the United States.” Except to the extent
7 expressly admitted, Amazon denies the allegations in Paragraph 190, and specifically denies the
8 substance of the quoted language.

9 191. To the extent the allegations in Paragraph 191 are legal conclusions and
10 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
11 required, Amazon admits that Paragraph 191 selectively cites and quotes from a report by the
12 Italian competition authority, which speaks for itself. Except to the extent expressly admitted,
13 Amazon denies the allegations in Paragraph 191, and specifically denies the substance of the
14 quoted language.

15 192. To the extent the allegations in Paragraph 192 are legal conclusions and
16 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
17 required, Amazon admits that Paragraph 192 selectively cites and quotes from a report by the
18 Italian competition authority, which speaks for itself. Amazon denies the allegations in
19 Paragraph 192 because the same goods that are available in online marketplaces are also
20 available offline, including on proprietary online sites, on social media and price comparison
21 services, and on specialized marketplace platforms among others. Except to the extent expressly
22 admitted, Amazon denies the remaining allegations in Paragraph 192.

23 193. To the extent the allegations in Paragraph 193 are legal conclusions and
24 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
25 required, Amazon admits that Paragraph 193 purportedly quotes from a report by the House
26 Antitrust Subcommittee, which summarizes various articles and reports, which speak for
27

1 themselves. Except to the extent expressly admitted, Amazon denies the allegations in
2 Paragraph 193.

3 194. Amazon admits that Paragraph 194 selectively cites a report by Feedvisor, which
4 speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations in
5 Paragraph 194.

6 195. Amazon admits that Paragraph 195 summarizes an article describing network
7 effects, which speaks for itself. Except to the extent expressly admitted, Amazon lacks
8 knowledge and information sufficient to form a belief as to the truth of the remaining allegations
9 in Paragraph 195 and therefore denies them.

10 196. Amazon admits the allegation in Paragraph 196 concerning the number of third-
11 party sellers offering goods for sale in Amazon's U.S. store. These third-party sellers have many
12 attractive distribution options other than Amazon through which to make sales, including their
13 own websites, other online retail websites, and physical stores, with it being common for third-
14 party sellers to sell their physical goods through multiple retail channels. Amazon admits that
15 consumers can search its U.S. store for goods sold directly by Amazon as well as by third-party
16 sellers. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph
17 196.

18 197. Amazon denies the allegations in Paragraph 197.

19 198. To the extent the allegations in Paragraph 198 are legal conclusions and
20 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
21 required, Amazon denies the allegations in Paragraph 198.

22 199. To the extent the allegations in Paragraph 199 are legal conclusions and
23 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
24 required, Amazon admits that Paragraph 199 selectively quotes from a Marketplace Pulse article,
25 which speaks for itself. Except to the extent expressly admitted, Amazon denies the remaining
26 allegations in Paragraph 199.

1 200. To the extent the allegations in Paragraph 200 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon denies the allegations in Paragraph 200.

4 201. To the extent the allegations in Paragraph 201 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as a response is required, Amazon
6 admits that Paragraph 201 selectively quotes from a report by the House Antitrust Subcommittee,
7 which speaks for itself. Third-party merchants often use multiple distribution channels for
8 selling their goods. Third-party sellers thrive in Amazon's U.S. store because Amazon has
9 helped third-party sellers compete by innovating and investing in and offering them selling tools,
10 including tools to help sellers manage inventory, process payments, track shipments, and create
11 reports. Amazon's innovation and investment in Fulfillment by Amazon and the Prime
12 membership program meaningfully improved the customer experience of buying from
13 independent sellers, contributing to their success in Amazon's U.S. store. That is the type of
14 competition that the antitrust laws are designed to promote. Except to the extent expressly
15 admitted, Amazon denies the allegations in Paragraph 201, and specifically denies the substance
16 of the quoted language.

17 202. Amazon admits that Paragraph 202 selectively quotes from Marketplace Pulse
18 articles, which speak for themselves. Amazon lacks knowledge and information sufficient to
19 form a belief as to the truth of the allegations based on the Marketplace Pulse articles relating to
20 Google and therefore denies them. Except to the extent expressly admitted, Amazon denies the
21 remaining allegations in Paragraph 202, and specifically denies the substance of the quoted
22 language.

23 203. Amazon admits that Paragraph 203 selectively quotes from Marketplace Pulse
24 articles, which speak for themselves. Amazon lacks knowledge and information sufficient to
25 form a belief as to the truth of the allegations based on the Marketplace Pulse articles relating to
26 Shopify and therefore denies them. Except to the extent expressly admitted, Amazon denies the
27 remaining allegations in Paragraph 203, and specifically denies the substance of the quoted

1 language. The retail landscape is intensely competitive. E-commerce has reduced barriers to
 2 entry, with companies like Shopify and Channel Advisor facilitating retailers' entry and
 3 expansion online. For example, in 2020, nearly \$120 billion in sales were processed through
 4 Shopify alone.⁴ Sales through Amazon represent only a small percentage of the intensely
 5 competitive U.S. retail industry, where customers switch between online and offline shopping,
 6 with most sales still made through physical stores that sell identical products to those offered
 7 online. There is also intense price competition, with consumers using their smartphones in stores
 8 to compare prices at other physical and online stores.

9 204. Amazon admits that Paragraph 204 selectively quotes from an article published
 10 by Marketplace Pulse based on an interview with Sally Hubbard, which speaks for itself. Except
 11 to the extent expressly admitted, Amazon denies the allegations in Paragraph 204, and
 12 specifically denies the substance of the quoted language.

13 205. Amazon admits that Paragraph 205 selectively cites to various articles, which
 14 speak for themselves. Amazon further admits that there is competition from Chinese companies
 15 in the United States, including Alibaba and Temu. Except to the extent expressly admitted,
 16 Amazon denies the allegations in Paragraph 205.

17 206. To the extent the allegations in Paragraph 206 are legal conclusions and
 18 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
 19 required, Amazon admits that Paragraph 206 selectively quotes from a Marketplace Pulse article,
 20 which speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations
 21 in Paragraph 206, and specifically denies the substance of the quoted language.

22 207. To the extent the allegations in Paragraph 207 are legal conclusions and
 23 characterizations, no responsive pleading is required. Plaintiffs' challenge to the Fair Pricing
 24 Policy attacks Amazon's efforts to prohibit price gouging, which is illegal under the laws of
 25

26
 27 ⁴ Do Good Things, *The Future of eCommerce: Shopify Online Store 2.0* (July 19, 2021),
<https://www.dogoodthings.co.nz/blog/ecommerce-trends-shopify-online-store-2-0>.

1 many states. Insofar as any responsive pleading is required, Amazon denies the allegations in
2 Paragraph 207.

3 208. To the extent the allegations in Paragraph 208 are legal conclusions and
4 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
5 required, Amazon denies the allegations in Paragraph 208. Amazon focuses on building
6 consumer trust through everyday low prices—not short term or per-unit profitability. Amazon’s
7 mission is to be Earth’s most customer-centric company. Amazon competes vigorously every
8 day to provide its customers lower prices, more selection, and better service. Third-party sellers
9 benefit by being associated with Amazon’s reputation as a place consumers find the best
10 selection and low prices.

11 209. Amazon denies the allegations in Paragraph 209.

12 210. To the extent the allegations in Paragraph 210 are legal conclusions and
13 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
14 required, Amazon denies the allegations in Paragraph 210.

15 211. Amazon admits that Plaintiffs purport to bring a class action pursuant to the
16 Federal Rules of Civil Procedure. Except to the extent expressly admitted, Amazon denies the
17 allegations in Paragraph 211 and specifically denies that this case can be maintained as a class
18 action on behalf of either of the proposed classes.

19 212. Amazon admits that Plaintiffs seek to exclude the individuals identified in
20 Paragraph 212 from the putative classes Plaintiffs seek to represent. Except to the extent
21 expressly admitted, Amazon denies the remaining allegations in Paragraph 212 and specifically
22 denies that this case can be maintained as a class action on behalf of either of the proposed
23 classes.

24 213. Amazon denies that the identity of all products encompassed within the National
25 Class definition, i.e., Class Products, are readily identifiable from information and records
26 maintained by Amazon. The claims by the California Class were dismissed; accordingly, no
27 response to the allegations relating to the California Class is required. *Frame-Wilson*, 2023 WL

1 2632513, at *7. Except to the extent expressly admitted, Amazon denies the remaining
2 allegations in Paragraph 213.

3 214. Amazon admits that the proposed class in this case is unprecedented in size, with
4 the Supreme Court previously recognizing that a class of about 1,500,000 members was “one of
5 the most expansive classes ever.” *Wal-Mart v. Dukes*, 564 U.S. 338, 342 (2011). Except to the
6 extent admitted, Amazon denies the remaining allegations in Paragraph 214 and specifically
7 denies that this case can be maintained as a class action on behalf of either of the proposed
8 classes.

9 215. To the extent the allegations in Paragraph 215 are legal conclusions and
10 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
11 required, Amazon denies the allegations in Paragraph 215.

12 216. To the extent the allegations in Paragraph 216 are legal conclusions and
13 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
14 required, Amazon lacks knowledge and information sufficient to form a belief as to the truth of
15 the allegations in Paragraph 216 and therefore denies them.

16 217. To the extent the allegations in Paragraph 217 are legal conclusions and
17 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
18 required, Amazon denies the allegations in Paragraph 217 and specifically denies that this case
19 can be maintained as a class action on behalf of either of the proposed classes.

20 218. To the extent the allegations in Paragraph 218 are legal conclusions and
21 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
22 required, Amazon denies the allegations in Paragraph 218 and specifically denies that this case
23 can be maintained as a class action on behalf of either of the proposed classes.

24 219. To the extent the allegations in Paragraph 219 are legal conclusions and
25 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
26 required, Amazon denies the allegations in Paragraph 219 and specifically denies that this case
27 can be maintained as a class action on behalf of either of the proposed classes.

220. To the extent the allegations in Paragraph 220 are legal conclusions and characterizations, no responsive pleading is required. Insofar as any responsive pleading is required, Amazon denies the allegations in Paragraph 220 and specifically denies that this case can be maintained as a class action on behalf of either of the proposed classes.

221. To the extent the allegations in Paragraph 221 are legal conclusions and characterizations, no responsive pleading is required. Insofar as any responsive pleading is required, Amazon denies the allegations in Paragraph 221 and specifically denies that this case can be maintained as a class action on behalf of either of the proposed classes.

222. To the extent the allegations in Paragraph 222 are legal conclusions and characterizations, no responsive pleading is required. Insofar as any responsive pleading is required, Amazon denies the allegations in Paragraph 222 and specifically denies that Plaintiffs have antitrust injury.

223. To the extent the allegations in Paragraph 223 are legal conclusions and characterizations, no responsive pleading is required. Insofar as any responsive pleading is required, Amazon denies the allegations in Paragraph 223 and specifically denies that Plaintiffs have antitrust injury. The retail landscape is intensely competitive. E-commerce has reduced barriers to entry, with companies like Shopify and Channel Advisor facilitating retailers' entry and expansion online. For example, in 2020, nearly \$120 billion in sales were processed through Shopify alone.⁵ Sales through Amazon represent only a small percentage of the intensely competitive U.S. retail industry, where customers switch between online and offline shopping, with most sales still made through physical stores that sell identical products to those offered online. There is also intense price competition, with consumers using their smartphones in stores to compare prices at other physical and online stores.

224. Amazon reasserts and hereby incorporates by reference its responses to each paragraph of Plaintiffs' Complaint, as though fully set forth herein.

⁵ Do Good Things, *The Future of eCommerce: Shopify Online Store 2.0* (July 19, 2021), <https://www.dogoodthings.co.nz/blog/ecommerce-trends-shopify-online-store-2-0>.

1 225. Amazon admits that Plaintiffs purport to bring this claim on behalf of a
2 nationwide class. Except to the extent expressly admitted, Amazon denies the in Paragraph 225
3 and specifically denies that this case can be maintained as a class action on behalf of the
4 proposed nationwide class.

5 226. To the extent the allegations in Paragraph 226 are legal conclusions and
6 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
7 required, Amazon admits that it sells a wide range of physical goods to consumers shopping in
8 its U.S. store. Except to the extent expressly admitted, Amazon denies the allegations in
9 Paragraph 226. Amazon notes that the Court has already held that Plaintiffs are not challenging
10 Amazon's conduct as a competitor to third-party sellers, but instead challenge the vertical
11 agreement between third-party sellers and Amazon. *Frame-Wilson*, 591 F. Supp. 3d at 986–87;
12 *Frame-Wilson*, 2023 WL 2632513, at *4.

13 227. To the extent the allegations in Paragraph 227 are legal conclusions and
14 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
15 required, Amazon denies the allegations in Paragraph 227. Amazon notes that the Court has
16 already held that Plaintiffs are not challenging Amazon's conduct as a competitor to third-party
17 sellers, but instead challenge the vertical agreement between third-party sellers and Amazon,
18 *Frame-Wilson*, 591 F. Supp. 3d at 986-87; *Frame-Wilson*, 2023 WL 2632513, at *4, and as a
19 result, Plaintiffs have failed to “present facts ‘supporting a horizontal agreement, a “meeting of
20 the minds,” or conspiracy between’ third-party sellers who entered an MFN that would lead to
21 *per se* liability,” *Frame-Wilson*, 2023 WL 2632513, at *5. Accordingly, the Court dismissed this
22 cause of action. *Id.*

23 228. To the extent the allegations in Paragraph 228 are legal conclusions and
24 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
25 required, Amazon denies the allegations in Paragraph 228. Amazon notes that the Court has
26 already held that Plaintiffs are not challenging Amazon's conduct as a competitor to third-party
27

1 sellers, but instead challenge the vertical agreement between third-party sellers and Amazon.
2 *Frame-Wilson*, 591 F. Supp. 3d at 986-87; *Frame-Wilson*, 2023 WL 2632513, at *4.

3 229. To the extent the allegations in Paragraph 229 are legal conclusions and
4 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
5 required, Amazon denies the allegations in Paragraph 229. Amazon notes that the Court has
6 already held that Plaintiffs are not challenging Amazon's conduct as a competitor to third-party
7 sellers, but instead challenge the vertical agreement between third-party sellers and Amazon.
8 *Frame-Wilson*, 591 F. Supp. 3d at 986-87; *Frame-Wilson*, 2023 WL 2632513, at *4.

9 230. To the extent the allegations in Paragraph 230 are legal conclusions and
10 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
11 required, Amazon denies the allegations in Paragraph 230. Amazon notes that the Court has
12 already held that Plaintiffs are not challenging Amazon's conduct as a competitor to third-party
13 sellers, but instead challenge the vertical agreement between third-party sellers and Amazon.
14 *Frame-Wilson*, 591 F. Supp. 3d at 986-87; *Frame-Wilson*, 2023 WL 2632513, at *4.

15 231. To the extent the allegations in Paragraph 231 are legal conclusions and
16 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
17 required, Amazon denies the allegations in Paragraph 231.

18 232. To the extent the allegations in Paragraph 232 are legal conclusions and
19 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
20 required, Amazon denies the allegations in Paragraph 232. Amazon notes that the Court has
21 already held that Plaintiffs are not challenging Amazon's conduct as a competitor to third-party
22 sellers, but instead challenge the vertical agreement between third-party sellers and Amazon,
23 *Frame-Wilson*, 591 F. Supp. 3d at 986-87; *Frame-Wilson*, 2023 WL 2632513, at *4, and as a
24 result, Plaintiffs have failed to "present facts 'supporting a horizontal agreement, a "meeting of
25 the minds," or conspiracy between' third-party sellers who entered an MFN that would lead to
26 *per se* liability," *Frame-Wilson*, 2023 WL 2632513, at *5. Accordingly, the Court dismissed this
27 cause of action. *Id.*

1 233. To the extent the allegations in Paragraph 233 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon denies the allegations in Paragraph 233. Amazon notes that the Court has
4 already held that Plaintiffs are not challenging Amazon's conduct as a competitor to third-party
5 sellers, but instead challenge the vertical agreement between third-party sellers and Amazon,
6 *Frame-Wilson*, 591 F. Supp. 3d at 986-87; *Frame-Wilson*, 2023 WL 2632513, at *4, and as a
7 result, Plaintiffs have failed to "present facts 'supporting a horizontal agreement, a "meeting of
8 the minds," or conspiracy between' third-party sellers who entered an MFN that would lead to
9 *per se* liability," *Frame-Wilson*, 2023 WL 2632513, at *5. Accordingly, the Court dismissed this
10 cause of action. *Id.*

11 234. To the extent the allegations in Paragraph 234 are legal conclusions and
12 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
13 required, Amazon denies the allegations in Paragraph 234. Amazon notes that the Court has
14 already held that Plaintiffs are not challenging Amazon's conduct as a competitor to third-party
15 sellers, but instead challenge the vertical agreement between third-party sellers and Amazon,
16 *Frame-Wilson*, 591 F. Supp. 3d at 986-87; *Frame-Wilson*, 2023 WL 2632513, at *4, and as a
17 result, Plaintiffs have failed to "present facts 'supporting a horizontal agreement, a "meeting of
18 the minds," or conspiracy between' third-party sellers who entered an MFN that would lead to
19 *per se* liability," *Frame-Wilson*, 2023 WL 2632513, at *5. Accordingly, the Court dismissed this
20 cause of action. *Id.*

21 235. To the extent the allegations in Paragraph 235 are legal conclusions and
22 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
23 required, Amazon denies the allegations in Paragraph 235. Amazon notes that the Court has
24 already held that Plaintiffs are not challenging Amazon's conduct as a competitor to third-party
25 sellers, but instead challenge the vertical agreement between third-party sellers and Amazon,
26 *Frame-Wilson*, 591 F. Supp. 3d at 986-87; *Frame-Wilson*, 2023 WL 2632513, at *4, and as a
27 result, Plaintiffs have failed to "present facts 'supporting a horizontal agreement, a "meeting of

1 the minds,” or conspiracy between’ third-party sellers who entered an MFN that would lead to
2 *per se* liability,” *Frame-Wilson*, 2023 WL 2632513, at *5. Accordingly, the Court dismissed this
3 cause of action. *Id.*

4 236. Amazon reasserts and hereby incorporates by reference its responses to each
5 paragraph of Plaintiffs’ Complaint, as though fully set forth herein.

6 237. Amazon admits that Plaintiffs purport to bring this claim on behalf of a
7 nationwide class. Except to the extent expressly admitted, Amazon denies the allegations in
8 Paragraph 237 and specifically denies that this case can be maintained as a class action on behalf
9 of the proposed nationwide class.

10 238. To the extent the allegations in Paragraph 238 are legal conclusions and
11 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
12 required, Amazon denies the allegations in Paragraph 238.

13 239. To the extent the allegations in Paragraph 239 are legal conclusions and
14 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
15 required, Amazon denies the allegations in Paragraph 239.

16 240. To the extent the allegations in Paragraph 240 are legal conclusions and
17 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
18 required, Amazon denies the allegations in Paragraph 240.

19 241. To the extent the allegations in Paragraph 241 are legal conclusions and
20 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
21 required, Amazon denies the allegations in Paragraph 241.

22 242. To the extent the allegations in Paragraph 242 are legal conclusions and
23 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
24 required, Amazon denies the allegations in Paragraph 242.

25 243. To the extent the allegations in Paragraph 243 are legal conclusions and
26 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
27 required, Amazon denies the allegations in Paragraph 243

1 244. To the extent the allegations in Paragraph 244 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon denies the allegations in Paragraph 244.

4 245. To the extent the allegations in Paragraph 245 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
6 required, Amazon denies the allegations in Paragraph 245.

7 246. To the extent the allegations in Paragraph 246 are legal conclusions and
8 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
9 required, Amazon denies the allegations in Paragraph 246.

10 247. To the extent the allegations in Paragraph 247 are legal conclusions and
11 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
12 required, Amazon denies the allegations in Paragraph 247.

13 248. To the extent the allegations in Paragraph 248 are legal conclusions and
14 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
15 required, Amazon denies the allegations in Paragraph 248.

16 249. Amazon reasserts and hereby incorporates by reference its responses to each
17 paragraph of Plaintiffs' Complaint, as though fully set forth herein.

18 250. Amazon admits that Plaintiffs purport to bring this claim on behalf of a
19 nationwide class. Except to the extent expressly admitted, Amazon denies the allegations in
20 Paragraph 250 and specifically denies that this case can be maintained as a class action on behalf
21 of the proposed nationwide class.

22 251. To the extent the allegations in Paragraph 251 are legal conclusions and
23 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
24 required, Amazon denies the allegations in Paragraph 251.

25 252. To the extent the allegations in Paragraph 252 are legal conclusions and
26 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
27 required, Amazon denies the allegations in Paragraph 252.

1 253. To the extent the allegations in Paragraph 253 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon denies the allegations in Paragraph 253.

4 254. To the extent the allegations in Paragraph 254 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
6 required, Amazon denies the allegations in Paragraph 254.

7 255. To the extent the allegations in Paragraph 255 are legal conclusions and
8 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
9 required, Amazon denies the allegations in Paragraph 255.

10 256. Amazon reasserts and hereby incorporates by reference its responses to each
11 paragraph of Plaintiffs' Complaint, as though fully set forth herein.

12 257. Amazon admits that Plaintiffs purport to bring this claim on behalf of a
13 nationwide class. Except to the extent expressly admitted, Amazon denies that this case can be
14 maintained as a class action on behalf of the proposed nationwide class.

15 258. To the extent the allegations in Paragraph 258 are legal conclusions and
16 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
17 required, Amazon denies the allegations in Paragraph 258.

18 259. To the extent the allegations in Paragraph 259 are legal conclusions and
19 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
20 required, Amazon denies the allegations in Paragraph 259.

21 260. To the extent the allegations in Paragraph 260 are legal conclusions and
22 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
23 required, Amazon denies the allegations in Paragraph 260.

24 261. To the extent the allegations in Paragraph 261 are legal conclusions and
25 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
26 required, Amazon denies the allegations in Paragraph 261.

1 262. To the extent the allegations in Paragraph 262 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon denies the allegations in Paragraph 262.

4 263. To the extent the allegations in Paragraph 263 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
6 required, Amazon denies the allegations in Paragraph 263.

7 264. To the extent the allegations in Paragraph 264 are legal conclusions and
8 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
9 required, Amazon denies the allegations in Paragraph 264.

10 265. Amazon reasserts and hereby incorporates by reference its responses to each
11 paragraph of Plaintiffs' Complaint, as though fully set forth herein.

12 266. Amazon admits that Plaintiffs purport to bring this claim on behalf of a
13 nationwide class. Except to the extent expressly admitted, Amazon denies the allegations in
14 Paragraph 266 and specifically denies that this case can be maintained as a class action on behalf
15 of the proposed nationwide class.

16 267. To the extent the allegations in Paragraph 267 are legal conclusions and
17 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
18 required, Amazon denies the allegations in Paragraph 267.

19 268. To the extent the allegations in Paragraph 268 are legal conclusions and
20 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
21 required, Amazon denies the allegations in Paragraph 268.

22 269. To the extent the allegations in Paragraph 269 are legal conclusions and
23 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
24 required, Amazon denies the allegations in Paragraph 269.

25 270. To the extent the allegations in Paragraph 270 are legal conclusions and
26 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
27 required, Amazon denies the allegations in Paragraph 270.

1 271. To the extent the allegations in Paragraph 271 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon denies the allegations in Paragraph 271.

4 272. To the extent the allegations in Paragraph 272 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
6 required, Amazon denies the allegations in Paragraph 272.

7 273. To the extent the allegations in Paragraph 273 are legal conclusions and
8 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
9 required, Amazon denies the allegations in Paragraph 273.

10 274. To the extent the allegations in Paragraph 274 are legal conclusions and
11 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
12 required, Amazon denies the allegations in Paragraph 274.

13 275. To the extent the allegations in Paragraph 275 are legal conclusions and
14 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
15 required, Amazon denies the allegations in Paragraph 275.

16 276. Amazon reasserts and hereby incorporates by reference its responses to each
17 paragraph of Plaintiffs' Complaint, as though fully set forth herein.

18 277. The Court dismissed Plaintiffs' Cartwright Act claim, *Frame-Wilson*, 2023 WL
19 2632513, at *7; accordingly, no responsive pleading is required. Insofar as a response is
20 required, Amazon admits that Plaintiffs purport to bring this claim on behalf of a statewide class
21 of California purchasers. Except to the extent expressly admitted, Amazon denies the allegations
22 in Paragraph 277 and specifically denies that this case can be maintained as a class action on
23 behalf of the proposed statewide class of California purchasers.

24 278. To the extent the allegations in Paragraph 278 are legal conclusions and
25 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
26 required, Amazon admits the allegations in Paragraph 278.

1 279. The Court dismissed Plaintiffs' Cartwright Act claim, *Frame-Wilson*, 2023 WL
2 2632513, at *7; accordingly, no responsive pleading is required. Insofar as a response is
3 required, Amazon admits that Paragraph 279 selectively quotes from Cal. Bus. & Prof. Code §
4 301, which speaks for itself. Except to the extent expressly admitted, Amazon denies the
5 allegations in Paragraph 279, and specifically denies the substance of the quoted language.

6 280. The Court dismissed Plaintiffs' Cartwright Act claim, *Frame-Wilson*, 2023 WL
7 2632513, at *7; accordingly, no responsive pleading is required. Insofar as a response is
8 required, the allegations in Paragraph 280 are legal conclusions and characterizations, to which
9 no responsive pleading is required. Insofar as any responsive pleading is required, Amazon
10 admits that Paragraph 280 selectively seeks to paraphrase Cal. Bus. & Prof. Code § 16720,
11 which speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations
12 in Paragraph 280.

13 281. The Court dismissed Plaintiffs' Cartwright Act claim, *Frame-Wilson*, 2023 WL
14 2632513, at *7; accordingly, no responsive pleading is required. Insofar as a response is
15 required, the allegations in Paragraph 281 are legal conclusions and characterizations, to which
16 no responsive pleading is required. Insofar as any responsive pleading is required, Amazon
17 denies the allegations in Paragraph 281.

18 282. The Court dismissed Plaintiffs' Cartwright Act claim, *Frame-Wilson*, 2023 WL
19 2632513, at *7; accordingly, no responsive pleading is required. Insofar as a response is
20 required, the allegations in Paragraph 282 are legal conclusions and characterizations, to which
21 no responsive pleading is required. Insofar as any responsive pleading is required, Amazon
22 admits that Paragraph 282 seeks to paraphrase Cal. Bus. & Prof. Code § 16726, which speaks for
23 itself. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 282.

24 283. The Court dismissed Plaintiffs' Cartwright Act claim, *Frame-Wilson*, 2023 WL
25 2632513, at *7; accordingly, no responsive pleading is required. Insofar as a responsive
26 pleading is required, Amazon lacks knowledge or information sufficient to form a belief as to the
27 allegations that putative members of the proposed California Class purchased products defined

1 by the Complaint as Class Products during the period defined in the Complaint as the Class
 2 Period and therefore denies them. Amazon denies the remaining allegations in Paragraph 283.

3 284. The Court dismissed Plaintiffs' Cartwright Act claim, *Frame-Wilson*, 2023 WL
 4 2632513, at *7; accordingly, no responsive pleading is required. Insofar as a response is
 5 required, the allegations in Paragraph 284 are legal conclusions and characterizations, to which
 6 no responsive pleading is required. Insofar as any responsive pleading is required, Amazon
 7 denies the allegations in Paragraph 284.

8 285. Amazon admits that Plaintiffs demand a jury trial. Amazon admits that Paragraph
 9 285 sets forth the relief that Plaintiffs purport to seek. Except to the extent expressly admitted,
 10 Amazon denies that Plaintiffs are entitled to any such relief and denies the remaining allegations
 11 in Paragraph 285. The remainder of the Complaint consists of Plaintiffs' prayer for relief to
 12 which no response is required. To the extent a response is required, Amazon denies the
 13 allegations in Paragraph 285 and specifically denies that Plaintiffs are entitled to the relief sought
 14 in the Complaint or to any relief whatsoever.

15 **SEPARATE DEFENSES**

16 Below are Amazon's separate defenses. By setting forth these separate defenses,
 17 Amazon does not assume any burden of proof as to any fact issue or other element of any cause
 18 of action that properly belongs to Plaintiffs. Amazon reserves the right to allege additional
 19 defenses as they may become known during discovery, and to amend its Answer accordingly.

20 **FIRST DEFENSE**

21 **(LACK OF STANDING)**

22 Some or all of Plaintiffs' claims and those of the alleged classes are barred, in whole or in
 23 part, insofar as Plaintiffs or putative members of the alleged classes lack standing to assert claims
 24 individually or in a representative capacity.

25 **SECOND DEFENSE**

26 **(LACK OF ANTITRUST STANDING)**

1 Some or all of Plaintiffs' claims and those of the alleged classes are barred, in whole or in
 2 part, insofar as the chain of causation between Plaintiffs' claimed injury and the alleged
 3 anticompetitive conduct is too attenuated, and there are multiple intervening causes.

4 **THIRD DEFENSE**

5 **(LEGITIMATE BUSINESS JUSTIFICATIONS)**

6 Some or all of Plaintiffs' claims and those of alleged classes are barred, in whole or in
 7 part, because at all times Amazon's conduct was reasonable and its actions were undertaken in
 8 good faith to advance legitimate business interests and had the effect of promoting, encouraging,
 9 and increasing competition.

10 **FOURTH DEFENSE**

11 **(DUPLICATIVE RECOVERY)**

12 Plaintiffs' claims and those of the alleged classes are barred to the extent any recovery by
 13 Plaintiffs and the alleged classes would be duplicative of recovery by other plaintiffs and other
 14 lawsuits, subjecting Amazon to the possibility of multiple recovery; such recovery is barred by
 15 the Fifth and Eighth Amendments to the U.S. Constitution.

16 **FIFTH DEFENSE**

17 **(IMPROPER DAMAGES PRAYERS)**

18 To the extent that Plaintiffs and the alleged classes seek a single sum of damages, the
 19 prayer for damages is improper. As a matter of constitutional right and substantive due process,
 20 Amazon would be entitled to contest by jury trial its liability for damages to any particular
 21 individual plaintiff, even if the representatives of the putative class prevail on their claims.

22 **SIXTH DEFENSE**

23 **(FAILURE TO MITIGATE)**

24 Some or all of Plaintiffs' claims and those of the alleged classes are barred from recovery
 25 of some or any alleged damages because of and to the extent of their failure to mitigate.

26 **EIGHTH DEFENSE**

27 **(STATUTES OF LIMITATIONS)**

1 Plaintiffs' claims and those of the alleged classes are barred in whole or in part by the
2 statute of limitations applicable to their respective claims to the extent they seek relief based on
3 purchases outside of the applicable four-year limitations period.

4 **NINTH DEFENSE**

5 **(FAILURE TO JOIN INDISPENSABLE PARTY)**

6 Plaintiffs' claims and those of the alleged classes are barred, in whole or in part, because
7 they have failed to join third-party sellers who are parties necessary for a just adjudication of
8 their purported claims.

9 **TENTH DEFENSE**

10 **(ACQUIESCENCE)**

11 Plaintiffs' claims and those of the alleged classes are barred, in whole or in part, because
12 of ratification, agreement, acquiescence, authorization or consent to Amazon's alleged conduct.

13 **ELEVENTH DEFENSE**

14 **(UNDAMAGED CLASS MEMBERS)**

15 To the extent Plaintiffs and the alleged classes seek relief on behalf of purported class
16 members who have not suffered any damages, the Complaint and each of its claims for relief
17 violate Defendant's rights to due process under the United States Constitution.

18 **TWELTH DEFENSE**

19 **(WAIVER)**

20 Plaintiffs' claims and those of the alleged classes are barred, in whole or in part, by the
21 doctrine of waiver, including because Plaintiffs and putative members of the alleged classes
22 continued to make purchases on the internet after learning of the alleged anticompetitive conduct
23 and Plaintiffs continued to enjoy the benefits of said purchases. Thus, the doctrine of waiver
24 bars Plaintiffs' claims, in whole or in part.

25 **THIRTEENTH DEFENSE**

26 **(LACHES)**

1 The Complaint and each purported cause of action contained therein is barred by the
2 doctrine of laches because Plaintiffs and the alleged classes inexcusably and unreasonably
3 delayed in filing and serving the Complaint and all complaints in this action against Amazon, to
4 Amazon's prejudice.
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1 DATED this 24th day of May, 2023.

2 Davis Wright Tremaine LLP

3 /s/ John A. Goldmark

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